

Service Date: June 25, 2004

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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PETITION FOR Suspension of the)	UTILITY DIVISION
Federal Communications Commission)	
Requirement to Implement Wireline/Wireless)	DOCKET NO. D2004.3.39
Number Portability, under 47 U.S.C. §251(f)(2))	
)	ORDER NO. 6558a

ORDER ON DISCOVERY MOTIONS

II. Background and Findings

On June 23, 2004, at a regularly scheduled work session, the Montana Public Service Commission (PSC) took action in the above captioned proceeding. The PSC ruled on pending discovery motions as set forth in this Order.

On June 8, 2004, Western Wireless (Western) submitted data requests to the following carriers: Hot Springs, Ronan, Northern, Triangle, Central, Interbel, Nemont, Project, Valley, 3 Rivers, Lincoln and Southern Montana. Objections to certain data requests were filed with the Commission and Western filed a response to the objections.

As a threshold matter, Western object to the Montana Telecommunications Association (MTA) filing objections to data requests on behalf of its member carriers, 3 Rivers, Lincoln and Southern Montana. Western complains that MTA is not a party to this proceeding and that the Commission must issue a final order with respect to the individual carriers, and not with respect to the association. MTA filed the initial Petition that was assigned Docket Number D2004.3.39, and is thereby a party to this proceeding. The association may represent its member carriers throughout this proceeding, but must designate which individual carriers are being represented in filings that are made with the Commission, by listing such carriers appropriately in the caption of all filings made. In addition, MTA and any party appearing in this proceeding must comply with the rules on practice before the Commission, specifically, ARM 38.2.314.

The Commission acted on the objections to data requests as follows.

A. Montana Independent Telecommunications Association (MITS)

On behalf of its members Northern, Triangle, Central Montana, Interbel, Nemont, Project, and Valley, MITS filed objections to data requests numbered 13, 16, 22 and requests for production 7 and 8. Western agrees with the objections to data requests 13 and 22 and requests for production 7 and 8, and consents to their withdrawal. The Commission therefore sustains MITS' objections to data requests 13 and 22, and requests for production 7 and 8. The Commission reserves ruling on Western's request to limit the admissibility of evidence at hearing to that which has been produced through discovery. Objections to admission of evidence may be renewed at time of hearing, and the Commission will address such motions in accordance with governing procedural rules, specifically but not limited to ARM 38.2.4207.

With respect to MITS' objection to data request 16, the Commission over-rules MITS' objection and directs MITS, or its member carriers, to provide the information requested on or before July 1, 2004. The Commission finds that the information requested is relevant to the ultimate issue in this proceeding, and that the information is necessary for the Commission's decision. The objection is over-ruled as the information is within the scope of the proceeding and it is discoverable pursuant to M.R.Civ.Pro. 26, as adopted by the Commission in ARM 38.2.3301.

Responses to this data request must be produced by July 1, 2004, and MITS or the individual member carriers may request any necessary protective order as appropriate.

B. Montana Telecommunications Association (MTA)

On behalf of its member companies 3 Rivers, Lincoln and Southern Montana, MTA filed objections to data requests 7, 11 13, 16, 21, 22, 23, and requests for production 5 and 6. Western agrees with the objections to data requests 7, 11, 13, 21, and 22 and consents to their withdrawal. The Commission therefore sustains MTA's objections to data requests 7, 11, 13, 21, and 22. The Commission reserves ruling on Western's request to limit the admissibility of evidence at hearing to that which has been produced through discovery. Objections to admission of evidence may be renewed at time of hearing, and the Commission will address such motions in accordance with governing procedural rules, specifically but not limited to ARM 38.2.4207.

With respect to MTA's objection to data requests 16, 23 and requests for production 5 and 6, the Commission over-rules MTA's objection and directs MTA, or its member carriers, to

provide the information requested on or before July 1, 2004. The Commission finds that the information requested in these data requests and requests for production of documents is relevant to the ultimate issue in this proceeding, and that the information is necessary for the Commission's decision. The objection is over-ruled as the information is within the scope of the proceeding and it is discoverable pursuant to M.R.Civ.Pro. 26, as adopted by the Commission in ARM 38.2.3301. Responses to these data requests and requests for production of documents must be produced by July 1, 2004, and MTA or the individual member carriers may request any necessary protective order as appropriate.

C. Ronan and Hot Springs

Ronan and Hot Springs filed objections to data requests 7, 11 15, 16, 21, 22, and 23, and requests for production 5 and 6. Western agrees with the objections to data requests 7, 11, 15, 21, and 22 and consents to their withdrawal. The Commission therefore sustains Ronan's and Hot Spring's objections to data requests 7, 11, 15, 21, and 22. The Commission reserves ruling on Western's request to limit the admissibility of evidence at hearing to that which has been produced through discovery. Objections to admission of evidence may be renewed at time of hearing, and the Commission will address such motions in accordance with governing procedural rules, specifically but not limited to ARM 38.2.4207.

With respect to Ronan's and Hot Spring's objection to data requests 16, 23 and requests for production 5 and 6, the Commission over-rules Ronan's and Hot Springs' objection and directs Ronan and Hot Springs to provide the information requested on or before July 1, 2004. The Commission finds that the information requested in these data requests and requests for production of documents is relevant to the ultimate issue in this proceeding, and that the information is necessary for the Commission's decision. The objection is over-ruled as the information is within the scope of the proceeding and it is discoverable pursuant to M.R.Civ.Pro. 26, as adopted by the Commission in ARM 38.2.3301. Information requested in these data requests and requests for production must be produced by July 1, 2004, and Ronan and Hot Springs may request any necessary protective order as appropriate.

II. Order

THEREFORE, IT IS HEREBY ORDERED,

1. MITS' objections to Western's data requests 13 and 22, and requests for production 7 and 8 are sustained. The Commission reserves ruling on Western's request to limit the admissibility of evidence at hearing to that which has been produced through discovery. Objections to admission of evidence may be renewed at time of hearing, and the Commission will address such motions in accordance with governing procedural rules, specifically but not limited to ARM 38.2.4207.
2. MITS' objection to data request 16 is over-ruled and MITS, or its member carriers, is directed to provide the information requested on or before July 1, 2004.
3. MTA's objections to data requests 7, 11, 13, 21, and 22 are sustained. The Commission reserves ruling on Western's request to limit the admissibility of evidence at hearing to that which has been produced through discovery. Objections to admission of evidence may be renewed at time of hearing, and the Commission will address such motions in accordance with governing procedural rules, specifically but not limited to ARM 38.2.4207.
4. MTA's objections to data requests 16, 23 and requests for production 5 and 6 are over-ruled and the Commission directs MTA, or its member carriers, to provide the information requested on or before July 1, 2004.
5. Ronan's and Hot Spring's objections to data requests 7, 11, 15, 21, and 22 are sustained. The Commission reserves ruling on Western's request to limit the admissibility of evidence at hearing to that which has been produced through discovery. Objections to admission of evidence may be renewed at time of hearing, and the Commission will address such motions in accordance with governing procedural rules, specifically but not limited to ARM 38.2.4207.
6. Ronan's and Hot Spring's objections to data requests 16, 23 and requests for production 5 and 6 are over-ruled and Ronan and Hot Springs are required to provide the information requested on or before July 1, 2004.

Done and dated this 23rd day of June, 2004 by a vote of 4 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

THOMAS J. SCHNEIDER, Vice Chairman, acting Chair

MATT BRAINARD, Commissioner

GREG JERGESON, Commissioner

JAY STOVALL, Commissioner

ATTEST:

Connie Jones
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.